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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,618	08/27/2003	Gregg Lance Lehmberg	F6175(C)	4373

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EXAMINER	
WEIER, ANTHONY J	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 07/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/648,618	LEHMBERG ET AL	
	Examiner	Art Unit	
	Anthony Weier	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 April 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) *19 and 20* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-18* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group I (claims 1-18) in the reply filed on 4/3/06 is acknowledged. The traversal is on the ground(s) that the search of all the claim would not be a serious burden to the examiner. This is not found persuasive because the searching the claim of each group would require searching additional areas not required for the other group. Moreover, search of the other group would incur a different search strategy.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, "the conventional amount" lacks antecedent basis. Also, the terminology "the conventional amount used" is indefinite in that what is conventional at one point may not be to another. It is not clear as to the scope encompassed by said claim. Additional the last tow lines appear contradictory by requiring that the aroma compound be an additive but also saying that same may not be supplied or added to the water soluble material.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4, 7, 9-13, 16, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by DE 19919711 (see Abstract).

DE 19919711 discloses a product comprising tea or coffee with an aroma or essence component (e.g. tea or coffee) in a bag, said product being a precursor to a preparation of a beverage. In view of the indefinite nature of the term "conventional amount" and, therefore, the indefinite percentages relating to same, the claim is broad enough to includes any such amounts of said coffee or tea as called for in the instant claims. It should be noted that when referring to the additive as an aroma that DE 19919711 is referring to a natural aroma compound. Although DE 19919711 does not appear to specifically recite the preparation of the follow-up beverage composition from the precursor, it is inherent that same is the intent and natural consequence for a packaged dry coffee or tea product.

5. Claims 1-3 and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 560609 (see Abstract), EP 001460 (Abstract), Stoecklie et al (Abstract; col. 1), EP 011324 (Abstract; claims) or Soughan (Abstract; claims).

EP 560609, Stoecklie et al, EP 011324, EP 001460, and Soughan disclose a product comprising coffee with an aroma or essence component (e.g. coffee), said product being a precursor to a preparation of a beverage. In view of the indefinite

nature of the term "conventional amount" and, therefore, the indefinite percentages relating to same, the claim is broad enough to includes any such amounts of said coffee or tea as called for in the instant claims.

6. Claims 1-4, 7, 9-13, 16, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Johnson et al.

Johnson et al discloses a product comprising tea with an aroma or essence component (e.g. tea) in a bag, said product being a precursor to a preparation of a beverage. In view of the indefinite nature of the term "conventional amount" and, therefore, the indefinite percentages relating to same, the claim is broad enough to includes any such amounts of said coffee or tea as called for in the instant claims. It should be noted that when referring to the additive as an aroma that Johnson et al is referring to a natural aroma compound or synthetic compound (e.g. Abstract; col. 1, lines 59-68).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 19919711.

If it is shown that DE 19919711 does not disclose the particular amounts of infusible or water soluble material as called for in the instant claims, it would have been obvious to one having ordinary skill in the art at the time of the invention to have arrived at same depending on the strength of aroma desired in the precursor and, therefore, subsequent beverage.

DE 19919711 is silent regarding the use of tea leaf that has been decaffeinated. However, decaffeinated tea leaf is notoriously well known, and it would have been further obvious to have incorporated same as a matter of preference depending on the particular known health benefit derived from same.

If it is shown that DE 19919711 does not specify that the aroma compound is a natural aroma compound, it would have been further obvious to have employed same as a matter of preference depending on availability or cost since natural and artificial aroma compounds are notoriously well known in the prior art.

If it is shown that DE 19919711 does not inherently provide for the precursor being prepared into a beverage, it should be noted that the combination of a beverage precursor (e.g. ground or instant coffee) with water to attain a beverage product is notoriously well known, and it would have been further obvious to have said beverage as a natural, expected result for a beverage precursor.

9. Claims 1-3 and 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 560609, Stoecklie et al, EP 011324, EP 001460, or Soughan.

If it is shown that EP 560609, Stoecklie et al, EP 001460, EP 011324, and Soughan do not disclose the particular amounts of infusible or water soluble material as

called for in the instant claims, it would have been obvious to one having ordinary skill in the art at the time of the invention to have arrived at same depending on the strength of aroma desired in the precursor and, therefore, subsequent beverage.

10. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al.

If it is shown that Johnson et al does not disclose the particular amounts of infusible or water soluble material as called for in the instant claims, it would have been obvious to one having ordinary skill in the art at the time of the invention to have arrived at same depending on the strength of aroma desired in the precursor and, therefore, subsequent beverage.

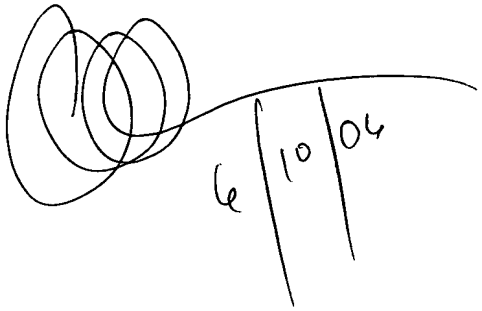
Johnson et al is silent regarding the use of tea leaf that has been decaffeinated. However, decaffeinated tea leaf is notoriously well known, and it would have been further obvious to have incorporated same as a matter of preference depending on the particular known health benefit derived from same.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Anthony Weier
Primary Examiner
Art Unit 1761



Anthony Weier
June 10, 2006